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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,088	08/22/2003	Brian G. Goodman	TUC920030074US1	9740
49080	7590	04/27/2005	EXAMINER	
DALE F. REGELMAN 4231 S. FREMONT AVENUE TUCSON, AZ 85714			MARTINEZ, DAVID E	
			ART UNIT	PAPER NUMBER

2182

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/646,088	Applicant(s) GOODMAN ET AL.	
	Examiner David E Martinez	Art Unit 2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-12, 15-20 and 23-24 is/are rejected.
- 7) ☒ Claim(s) 5,6,13,14,21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claims 1, 7, 8, 9, 17, 15, 16, 23 and 24, the use of the term "normal drive operations" and "normal operations" render the claims as indefinite. It is not clear as to what is meant by such terms, whether the device is performing a write operation at the particular time, a read operation, or perhaps some other operation. The many different modes could all be considered as "normal operations" for the device or they could also be considered special "not normal" operations" and thus any mode being claimed such as during "normal operations" is subjective. Due to the vagueness and a lack of clear definiteness used in the claims, the claims have been treated on their merits as best understood by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 7-12, 15-20 and 23-24, are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,754,895 to Bartel et al. (Bartel).

With regards to claims 1,9 and 17, Bartel teaches a method to activate a code update for a data storage drive [abstract], comprising the steps of:

receiving said code update at said data storage drive while said data storage drive performs normal drive operations [fig 1 elements 12, 14, fig 3, column 5 lines 1-4 and column 6 lines 57-66];

detecting a host computer transparent event [abstract, fig 6 element 602, column 8 lines 6-7];

activating said code update during said host computer transparent event [abstract, element 603, column 8 lines 7-13].

With regards to claims 2, 10 and 18, Bartel teaches the method of claim 1, wherein said host computer transparent event comprises a data storage drive reset [abstract, fig 6 element 602, column 8 lines 6-7].

With regards to claims 3, 11 and 19, Bartel teaches the method of claim 1, wherein said host computer transparent event comprises a power cycle to said data storage drive [abstract, fig 6 element 602, column 8 lines 6-7, having a reset is having a power cycle].

With regards to claims 4, 12 and 20, Bartel teaches the method of claim 1, further comprising the steps of:

receiving a host computer command [abstract, fig 6 element 602, column 8 lines 6-7];

determining if said host computer command is suitable for said host computer transparent event [abstract, fig 6 element 602, column 8 lines 6-7];

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operative if said host computer command is suitable for said host computer transparent event [abstract, fig 6 element 602, column 8 lines 6-7], activating said code update [abstract, element 603, column 8 lines 7-13]; and

performing said host computer command [abstract, fig 6 element 602, column 8 lines 6-7, performing reset].

With regards to claims 7, 15 and 23, Bartel teaches the method of claim 1, wherein said data storage drive comprises a memory device, further comprising the step of writing said code update to said memory device while said data storage drive remains in normal operation [fig 1 elements 12, 14, fig 3, column 5 lines 1-4 and column 6 lines 57-66, fig 5 see element 41 comprised of elements 38, 40, 501, 502].

With regards to claims 8, 16 and 24, Bartel teaches the method of claim 1, wherein said data storage drive comprises a memory device, further comprising the steps of:

generating drive status information [abstract, column 8 lines 14-25];

writing said drive status information to said memory device while said data storage drive remains in normal operation [abstract, column 8 lines 14-25].

Allowable Subject Matter

Claims 5-6, 13-14 and 21-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E Martinez whose telephone number is (571) 273-4152. The examiner can normally be reached on 8:30-5:00 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A Gaffin can be reached on (571) 272-4146. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DEM



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